

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 951 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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STATE OF GUJARAT

Versus

ASHOKBHAI DAVE

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Appearance:

LAPP Mr.BUKHARI FOR THE APPELLANT

MR NS SHETH for Respondent No. 1

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CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 08/10/97

#### ORAL JUDGEMENT

The appeal is filed by the State with a view to get the sentence awarded by the trial Court enhanced. The charge was under Sec.92 of the Factories Act, 1948 for breach of Sec. 21(1)(iv)(b). It relates to safety requirement pertaining to every part of transmission machinery.

2. The accused having admitted the guilt and when as per the prosecution case, it is obvious that a workman Ramkrishna Dayal lost his hand as he fell upon an exposed shafting end which could not have happened but for the want of proper guard and adequate safety precaution. The offence under Sec.21((1)(iv)(b), therefore, is clearly made out.

3. The sentence awarded is clearly less because Sec.92 proviso added in the year 1976 makes it incumbent upon the Court when there is serious bodily injury to award minimum sentence of Rs.5,000/-. What has been awarded is Rs.500/- only. The words "serious bodily

injuris" have also been explained in the explanation below the proviso. Loss of hand is clearly covered within the meaning thereof.

4. It is, therefore, obvious that the sentence of fine of Rs.500/- will have to be enhanced to Rs.5000/-. It is accordingly enhanced to Rs.5000/-. The fine initially imposed by the trial Court, having been paid, the respondent shall pay the balance amount of Rs.4,500/- within six weeks from today. The appeal is allowed accordingly.

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